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25 *United Parcel Service, Inc.*

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JOHN WILLOUGHBY, an individual, Plaintiff,	}	CASE NO. 2:16-cv-00140-JAD-CWH
v.	}	
UNITED PARCEL SERVICES, INC., a foreign corporation; EMPLOYEES(S) AGENT DOES through V, inclusive; and ROE ENTITIES through v, inclusive,	}	STIPULATED [PROPOSED] PROTECTIVE ORDER (FED. R. CIV. P. RULE 26(C))
Defendants.	}	

I. DEFINITIONS AND TERMS

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1 investigative files or documents, financial records, donor lists, commercial or trade
2 secret information of a sensitive and/or proprietary nature, competitive information
3 and income tax records or information. “Disclosed” is used in its broadest sense
4 and includes, inter alia, directly or indirectly shown, divulged, revealed, produced,
5 described, transmitted or otherwise communicated, in whole or in part.

6 3. “Discovery Material(s)” means any Confidential Information
7 presented in documents, answers to interrogatories, responses to requests for
8 admission, deposition testimony, deposition transcripts and exhibits, other
9 responses to requests for information and/or written information, whether produced
10 voluntarily or involuntarily, in response to discovery requests in this litigation by
11 any Party.

12 4. “Document” is defined as the term is used in Federal Rule of Civil
13 Procedure 34.”

14 5. “Expert” is defined as a person with specialized knowledge or
15 experience in a matter pertinent to the litigation who has been retained by a Party
16 or its counsel to serve as an expert witness or as a consultant in this action.

17 6. “House Counsel” means attorneys who are employees of a Party to
18 this Action. House Counsel does not include Outside Counsel of Record or any
19 other outside counsel.

20 7. “Non-Party” is any natural person, partnership, corporation,
21 association, or other legal entity not named as a Party to this action. “Outside
22 Counsel of Record” means attorneys who are not employees of a Party to this
23 Action but are retained to represent or advise a Party to this Action and have
24 appeared in this Action on behalf of that Party or are affiliated with a law firm
25 which has appeared on behalf of that Party, and includes support staff.

26 8. “Party” is any party to this Action, including all of its officers,
27 directors, employees, consultants, retained experts, and Outside Counsel of Record
28 (and their support staffs).

1 9. “Producing Party” is a Party or Non-Party that produces Discovery
2 Material in this Action.

3 10. “Professional Vendors” are persons or entities that provide litigation
4 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
5 demonstrations, and organizing, storing, or retrieving data in any form or medium)
6 and their employees and subcontractors.

7 11. “Under seal” is defined as sealing confidential documents consistent
8 with the procedure laid out by the Federal Rules for Sealing and Redacting Court
9 Records. In the event that the Clerk’s office publishes a new procedure for the
10 filing of documents under seal, the Parties may follow said published procedure.

11 12. “Expert” is defined as a person with specialized knowledge or
12 experience in a matter pertinent to the litigation who has been retained by a Party
13 or its counsel to serve as an expert witness or as a consultant in this action.

14 13. “Receiving Party” is a Party that receives Discovery Material from a
15 Producing Party.

16 **II. TYPES OF MATERIALS THAT MAY BE DESIGNATED AS**
17 **CONFIDENTIAL**

18 Any Discovery Material or Confidential Information, as defined above, may
19 be designated by a Producing Party as “Confidential” under this Order. The
20 assertion of this designation of “Confidential” shall constitute a representation to
21 the Court that counsel for the Producing Party or protected person believes in good
22 faith that the material so designated constitutes Confidential Information as defined
23 in this Order. Except with the prior written consent of the Producing Party or by
24 court order or as otherwise compelled by force of law, no Discovery Materials
25 stamped “Confidential” may be disclosed to any person except as permitted in
26 section IV.

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1 **III. DESIGNATION OF DISCOVERY MATERIALS AS CONFIDENTIAL**

2 (a) Designation. A Producing Party may designate as confidential
 3 Discovery Materials containing Confidential Information by stamping or otherwise
 4 marking the designated material as “Confidential.” Any Party may also designate
 5 information disclosed at such deposition as “Confidential” or “For Counsel Only”
 6 (or “Attorneys’ Eyes Only”) by notifying all of the parties in writing within thirty
 7 (30) days of receipt of the transcript, of the specific pages and lines of the
 8 transcript which should be treated as “Confidential” or “For Counsel Only” (or
 9 “Attorneys’ Eyes Only”) thereafter. Each Party shall attach a copy of such written
 10 notice or notices to the face of the transcript and each copy thereof in his
 11 possession, custody or control. Each and every deposition transcript shall be treated
 12 as “For Counsel Only” (or “Attorneys’ Eyes Only”) for a period of thirty (30) days
 13 after the receipt of the transcript.

14 A Party or Non-Party that makes original documents or materials available
 15 for inspection need not designate them for protection until after the inspecting
 16 Party has indicated which material it would like copied and produced. During the
 17 inspection and before the designation, all of the material made available for
 18 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
 19 identified the documents it wants copied and produced, the Producing Party must
 20 determine which documents, or portions thereof, qualify for protection under this
 21 Order. Then, before producing the specified documents, the Producing Party must
 22 affix the “CONFIDENTIAL” legend to each page that contains Protected Material.
 23 If only a portion or portions of the material on a page qualifies for protection, the
 24 Producing Party also must clearly identify the protected portion(s) (e.g., by making
 25 appropriate markings in the margins).

26 For information produced in some form other than documentary and for any
 27 other tangible items, that the Producing Party will affix in a prominent place on the
 28 exterior of the container or containers in which the information or item is stored

1 the legend "CONFIDENTIAL." If only a portion or portions of the information or
2 item warrant protection, the Producing Party, to the extent practicable, shall
3 identify the protected portion(s).

4 The fact that a document is stamped "Confidential" by one Party shall not be
5 construed as an admission by any other Party that such document is confidential,
6 nor shall it limit or preclude the right of any Party to object to the "Confidential"
7 designation and to file any appropriate motion(s) to determine the propriety of such
8 designation.

9 (b) Inadvertent Disclosure. If the Producing Party inadvertently fails to
10 stamp or otherwise appropriately designate or list certain documents, material, or
11 information as "Confidential" upon their production or disclosure, such inadvertent
12 failure to designate shall not constitute nor be deemed a waiver of a subsequent
13 claim of protected treatment under this Order.

14 In the event of any Party's inadvertent or unintentional failure to designate
15 protected information "confidential", such omission shall not be deemed a waiver
16 in whole or in part of that Party's claim of confidentiality, as long as the disclosing
17 Party notifies all parties in writing that such protected information constitutes
18 Confidential Information within 7 days after learning that the protected information
19 was inadvertently or unintentionally produced without an appropriate
20 confidentiality designation.

21 (c) Outside Disclosure. The terms of this Stipulated Protective Order
22 apply, without limitation to all documents and information exchanged between the
23 parties in the course of this litigation, whether or not such documents and/or
24 information were exchanged prior to the entry of this Order and/or were designated
25 as "Confidential." This provision allows a Party to designate a previously produced
26 document as "Confidential."

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1 **IV. OBJECTION TO A DESIGNATION OF DISCOVERY MATERIALS**
 2 **AS “CONFIDENTIAL”**

3 Any Party may contest a designation of “Confidential” by serving a written
 4 objection (by letter to the Designating Party that includes the legal and factual basis
 5 for the objection(s)) to the Confidentiality designation at any time up to the
 6 discovery cut-off including any continuance thereof. Upon service of such
 7 objection, the Parties shall make a good faith effort to resolve the issue informally.
 8 If that effort fails, the confidentiality designation shall expire unless, within thirty
 9 days of service of the objection, or such additional time as may be agreed upon the
 10 Parties, the Party seeking confidentiality applies to the Court for an order
 11 designating the document or information confidential. If such an application is
 12 made, the document or other information marked “Confidential” which is in
 13 dispute shall remain “Confidential,” as the case may be, until the dispute is
 14 resolved by and between or among the parties and so confirmed in writing or, if
 15 necessary, until order of the Court. On any such application, whether by noticed
 16 motion or ex parte application, the proponent of confidentiality shall have the
 17 burden of showing, by a preponderance of the evidence, good cause for the claimed
 18 protection. The Court shall have the authority to award sanctions on any such
 19 application or motion.

20 **V. PERMISSIBLE USE OF “CONFIDENTIAL” INFORMATION,**
 21 **DOCUMENTS, OR MATERIALS**

22 (a) Basic Principles. A Receiving Party may use Confidential Material
 23 that is disclosed or produced by another Party or by a Non-Party in connection
 24 with this Action only for prosecuting, defending, or attempting to settle this
 25 Action. Such Confidential Material may be disclosed only to the categories of
 26 persons and under the conditions described in this Order. When the Action has
 27 been terminated, a Receiving Party must comply with the provisions of section VI
 28 below.

1 Confidential Material must be stored and maintained by a Receiving Party at
 2 a location and in a secure manner that ensures that access is limited to the persons
 3 authorized under this Order.

4 (b) Disclosure of “CONFIDENTIAL” Information or Items. Unless
 5 otherwise ordered by the court or permitted in writing by the Designating Party, a
 6 Receiving Party may disclose any information or item designated
 7 “CONFIDENTIAL” only to:

8 i. the Receiving Party’s Outside Counsel of Record in this Action, as
 9 well as employees of said Outside Counsel of Record to whom it is reasonably
 10 necessary to disclose the information for this Action;

11 ii. the officers, directors, and employees (including House Counsel) of
 12 the Receiving Party to whom disclosure is reasonably necessary for this Action;

13 iii. Experts (as defined in this Order) of the Receiving Party to whom
 14 disclosure is reasonably necessary for this Action and who have signed the
 15 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 iv. the court and its personnel;

17 v. court reporters and their staff;

18 vi. professional jury or trial consultants, mock jurors, and Professional
 19 Vendors to whom disclosure is reasonably necessary for this Action and who have
 20 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 vii. the author or recipient of a document containing the information or a
 22 custodian or other person who otherwise possessed or knew the information;

23 viii. during their depositions, witnesses ,and attorneys for witnesses, in the
 24 Action to whom disclosure is reasonably necessary provided: (1) the deposing
 25 Party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
 26 they will not be permitted to keep any confidential information unless they sign the
 27 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
 28 agreed by the Designating Party or ordered by the court. Pages of transcribed

1 deposition testimony or exhibits to depositions that reveal Confidential Material
2 may be separately bound by the court reporter and may not be disclosed to anyone
3 except as permitted under this Stipulated Protective Order; and

4 ix. any mediator or settlement officer, and their supporting personnel,
5 mutually agreed upon by any of the parties engaged in settlement discussions.

6 **VI. MISCELLANEOUS**

7 1. The provisions of this Agreement shall not terminate at the resolution
8 of this matter. Even after final disposition of this litigation, the confidentiality
9 obligations imposed by this Order shall remain in effect until a Designating Party
10 agrees otherwise in writing or a court order otherwise directs. Final disposition
11 shall be deemed to be the later of (1) dismissal of all claims and defenses in this
12 Action, with or without prejudice; and (2) final judgment herein after the
13 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of
14 this Action, including the time limits for filing any motions or applications for
15 extension of time pursuant to applicable law.

16 2. Within sixty (60) days after the final conclusion of this matter,
17 documents stamped “Confidential” and all copies of such documents, other than
18 exhibits of record, shall be destroyed or returned to the Party who produced the
19 documents and designated them as “Confidential.”

20 3. Nothing in this Agreement shall prevent any Party or other person
21 from seeking modification of this Agreement or from objecting to discovery that it
22 believes to be otherwise improper. This Agreement, however, shall not be modified
23 absent an order of the court or the written agreement of all the Parties hereto.

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4. Any violation of this Order may be punished by any and all appropriate measures, including without limitation, contempt proceedings, and/or monetary sanctions.

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/s/ Andrew L. Rempfer

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1 Travis K. Jang-Busby, Esq.
2 (Bar No. 283256)
3 Appearing *pro hac vice*

4 Attorneys for Defendant
5 UNITED PARCEL SERVICE, INC.
6

7 APPROVED:

8 DATED: June 2, 2016
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12 ~~UNITED STATES DISTRICT JUDGE~~
13 MAGISTRATE JUDGE
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EXHIBIT "A"
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective
Order that was issued by the United States District Court for the District of Nevada
on _____ in the case of "John Willoughby v. United Parcel
Services, Inc." I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any person or entity except in
strict compliance with the provisions of this Order. I further agree to submit to the
jurisdiction of the United States District Court for the District of Nevada for the
purpose of enforcing the terms of this Stipulated Protective Order, even if such
enforcement proceedings occur after termination of this action. I hereby appoint
_____ [print or type full name] of
_____ [print or type full address and
telephone number] as my agent for service of process in connection with this action
or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____